



REPUBLIC OF KENYA



KENYA LAW
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**Muchai v Republic (Criminal Revision E028 of 2025)
[2026] KEHC 1136 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 1136 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION E028 OF 2025
FN MUCHEMI, J
JANUARY 29, 2026**

BETWEEN

MICHAEL KINUTHIA MUCHAI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Brief Facts

1. This undated application seeks for orders of review of sentence downwards and also for orders that the applicant be allowed to serve a non-custodial sentence upon review of the sentence.
2. The applicant states that he was charged in Kamwangi SPM Criminal Case No. E082 of 2025 with the offence of being in possession of narcotic drugs contrary to Section 3(1) as read with Section 3(2) of the *Narcotic Drugs and Psychotropic Substances Act* No. 3 of 1994 and that he pleaded guilty to the charge. He was sentenced to two (2) years imprisonment.
3. The applicant argues that the sentence imposed is harsh and excessive. Further, the applicant states that he is a young man suffering from severe back pain and acute asthma, which condition has worsened following the congestion in the prison. The applicant further asks the court to review his sentence and grant him a non custodial sentence.
4. In opposition to the application, the respondent filed a Replying Affidavit dated 18th November 2025 and states that the record revealed that the applicant had a previous conviction of a similar offence and thus a more deterrent sentence was deserving. The respondent further states that the sentence imposed by the trial court was proper and legal as it considered the aggravating and mitigating circumstances.
5. Parties disposed of the application by way of written submissions.



The Applicant's Submissions.

6. The applicant submits that at the time of his arrest he was sickly and was on anti-retroviral treatment and thus his immunity has been compromised due to poor diet. Thus he humbly asks the court to impose a lenient and appropriate sentence preferably probation which will enable him focus on his life.

The Respondent's Submissions

7. The respondent submits that the applicant is not a first offender having been previously charged of a similar offence where he was convicted and as such the sentence was legal and reasonable. The respondent further submits that the aggravating circumstances outweighed the mitigating circumstances.

The Law

8. The High Court's power of revision is set out in Article 165 (6) and (7) which provides:-
 - (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but over a superior court.
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.
9. Section 362 of the [Criminal Procedure Code](#) provides:-

The High Court may call and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate court.
10. Section 364(1) of the [Criminal Procedure Code](#) provides:-

In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders or which otherwise comes to his knowledge, the High Court may”-

 - a. in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by section 354, 357 and 358, and may enhance sentence;
 - b. In the case of any other order other than an order of acquittal alter or reverse the order.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence.
11. The revisionary jurisdiction of the High Court was discussed by Odunga J in a persuasive decision of [Joseph Nduvi Mbuvi v Republic](#) [2019] eKLR:-

“In my considered view, the object of the revisional jurisdiction of the High Court is to enable the high Court in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest



irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court’s revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.”

12. Similarly Nyakundi J in *Prosecutor v Stephen Lesinko* [2018] eKLR outlined the principles which will guide a court when examining the issues pertaining to section 362 of the *Criminal Procedure Code* as follows:-
 - a. Where the decision is grossly erroneous;
 - b. Where there is no compliance with the provisions of the law;
 - c. Where the finding of fact affecting the decision is not based on evidence or it is as a result of misreading or non-reading of evidence on record;
 - d. Where the material evidence on the parties is not considered; and
 - e. Where the judicial discretion is exercised arbitrarily or perversely if the lower court ignores facts and tries the accused of lesser offence.
13. The above provisions convey jurisdiction to this court to exercise revisionary powers in respect of orders of the subordinate courts. This court is therefore possessed of the requisite jurisdiction to hear and determine this application.
14. The applicant herein was convicted for the offence of being in possession of cannabis sativa (bhang) contrary to Section 3(1) as read with Section 3(2) of the *Narcotic Drugs and Psychotropic Substances Act* No. 3 of 1994 and upon pleading guilty was sentenced to two years imprisonment.
15. The penalty for the offence of possession of cannabis under Section 3(1) as read with Section 3(2) of the *Narcotic Drugs and Psychotropic Substances Act* is not more than five (5) years or to a fine of not more than one hundred thousand shillings. In the instant case, the applicant was found to be a repeat offender having been convicted in Gatundu CM Criminal Case No. E575 of 2024 and sentenced to pay a fine of Kshs. 15,000/- which called for a deterrent sentence. He was sentenced to two years imprisonment which sentence was within the law and commensurate to the offence.
16. I find that the applicant has not made a case for review of sentence herein.
17. This application has no merit and it is hereby dismissed with no order as to costs.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 29TH DAY OF JANUARY 2026.

F. MUCHEMI

JUDGE

